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IN THE

Supreme Court of the United States

No.

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BILL J. GAMBOCZ,

Petitioner,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Third Circuit of March 5, 1971.

OPINION

The opinion of the United States Court of Appeals for the Third Circuit bearing Case No. 19,047 and dated March 5, 1971 is appended below.

JURISDICTION

This is a petition for a writ of certiorari to review an Order of the United States Court of Appeals for the Third Circuit of March 5, 1971. A certified judgment in lieu of formal mandate was issued on March 5, 1971. This court

has jurisdiction to review the order and judgment of the United States Court of Appeals for the Third Circuit by reason of 28 U.S.C.A. sec. 1254.

QUESTIONS PRESENTED

1. Does the Fourteenth Amendment right to due process of law, equal protection of law, and the equal privileges and immunities as guaranteed to a United States citizen, apply to protect the Seventh Amendment right to trial by jury, when a litigant is precluded from having a trial on the merits by an "Order of Dismissal with Prejudice", which was acquired by a perpetrated fraud upon the Court?

2. Does the one year limitation provision of F.R.C.P., *Rule* 60(b), operate to bar the petitioner's motion to vacate and set aside a fraudulent order entered against him, without notice to the said petitioner as required pursuant to New Jersey Court Rules, *Rule* 4:42-1, and therefore without giving the petitioner opportunity to consent to form?

3. Does the one year limitation provision under *Rule* 60(b) bar the petitioner from the relief sought by him in view of the fact that he was neither given nor did he ever receive any notice prior to entry of judgment as required by F.R.C.P., *Rule* 77(d)?

4. Was the petitioner's constitutional procedure of due process of law, along with his constitutional substantive rights denied him when the "Final Order of Dismissal with Prejudice" was decided *ex parte*, and thereafter never sent notice of the judgment prior to its entry?

5. Is the petitioner entitled to relief, which was denied him, by violation of the requirements under N.J.C.R., *Rule* 4:42-1, and F.R.C.P., *Rule* 77(d)?

6. Is this case reviewable as provided by Sec. 1984 of Title 42, U.S.C.A., by the Supreme Court of the United States, under the same provisions and regulations as are provided by law for the review of other causes in said Court?

CONSTITUTIONAL PROVISIONS INVOLVED

1. "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved. . . ." *United States Constitution*, Amendment No. 7.

2. ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law." *United States Constitution*, Amendment No. 14.

STATEMENT OF CASE

Bill J. Gombocz, the petitioner, prior to August, 1965, received the nomination in a primary election to run against the incumbent for the office of Mayor of Edison, New Jersey. The incumbent Mayor, Gambocz's opponent for the office of Mayor was also Director of the Police Department.

On August 31, 1965, just prior to the general election, Mr. Gambocz was seized and arrested by the Edison Police, was taken to police headquarters, forced to empty his personal belongings from his possession, thereafter, thrown down a flight of stairs to the basement floor; thereafter he was finger printed, the police took mug shots and entered him on the police blotter, and then was forced to post bail to gain his freedom from incarceration.

The aforesaid arrest and incarceration was based upon an allegation by one of the respondent's, Mrs. Keller, named in the petitioner's suit, that he the petitioner had drawn a check for $55 payable to the said Mrs. Keller for which there were insufficient funds, nearly two years after the issuance of the check; whereupon the police did induce the complainant, Mrs. Keller by artifice and trickery, perpetrated through the direction of Mr. Gambocz's opponent, the incumbent Mayor who was also Director of the Police Department, to sign a complaint against the petitioner, Mr. Gambocz, which complaint the Court Clerk permitted and induced Mrs. Keller to sign in blank, and which was witnessed by that said Court Clerk, also in blank; and only thereafter, were allegations and charges doctored up into the body of the complaint. Further, in perpetration of the issuance of this fraudulent complaint, the complaint was sworn to and attested by the Court Clerk in the name of a

Magistrate who had disqualified himself from appearing in the matter. Whereupon, the complaint and the complainant's statement were simultaneously released to the press. Mr. Gambocz, the petitioner, was held over for the Grand Jury, which saw fit to enter *"No Bill"* two weeks after the general election. To all of the aforesaid stated, it cannot be denied that the citizens of Edison were denied a *bona fide* general election.

On January 3, 1968, Mr. Gambocz's attorney entered a complaint and demand for trial by jury against the said respondents under the "Civil Rights Act", pursuant to the provisions of Sec. 1983 and 1985, of Title 42, U.S.C.A., and Sec. 1331 and 1343 of Title 28, U.S.C.A., in the United States District Court for the District of New Jersey.

Thereafter, on or about October 17, 1968, the petitioner's attorney informed him that he could not and would not represent him any further in the litigation before the Court, for respondents' counsels were insistent that he remove himself from the case under Canon #19 of the Canons of Professional Ethics of the American Bar Association, because they alleged he was to be an essential witness to a crucial fact issue in the case.

Because of the fact that the petitioner was left without benefit and aid of legal counsel he did set forth a motion on October 25, 1968, requesting the Courts permission to withdraw his pending action pursuant to federal Rule, *Fed. Rules Civ. Proc., Rule* 41(a)(2), 28 U.S.C.A.

On October 28, 1968, the Court did entertain argument on the motion of the petitioner, with the petitioner, and counsels for the respondents present in Court, thereafter, at the conclusion of the argument, "no objections" being voiced by the respondents the Court did dismiss as a matter of law the pending action "without prejudice".

Thereafter, on or about March 28, 1970, the petitioner prepared to enter suit against the respondents, and on checking the files of the original suit of January 3, 1968, in the United States District Court found that a final order of dismissal, which was prepared and submitted by his adversaries to the Court, and was entered into judgment on November 8, 1968, contrary to the Courts' ruling of October 28, 1968, that being "without prejudice".

The petitioner on discovery of the aforesaid did file on April 10, 1970, a notice of motion to the Court for an order to vacate and set aside the final order of dismissal with prejudice of November 8, 1968; on May 11, 1970, the Court did hear argument, and at the conclusion, the Court did deny the petitioner's motion.

The order of the District Court of May 15, 1970, denying the petitioner's motion to vacate and set aside the order of dismissal with prejudice was appealed to the United States Court of Appeals for the Third Circuit on May 18, 1970; on January 8, 1971, the appeal was argued and on March 5, 1971, the Third Circuit did file its opinion which affirmed the judgment of the District Court.

The opinion of the Third Circuit, which is appended hereto, is totally grounded on the sole bases that, "The simple answer to the appellants situation here is that he is barred by the one-year limitation under *Rule* 60(b)".

[The following is the factual account of the dissmissal of the petitioners' pending action before the District Court, which is contained in the Joint Appendix, as submitted with "Brief for Plaintiff-Appellant" to the Third Circuit in the matter of Bill J. Gambocz, Plaintiff-Appellant, vs. John D. Ellmyer, Jr., Lillian Apel, Louis La Plaga, and Marie Keller, Defendants-Appellees, Docket #19,047, the same

transcript citations are again utilized herein, and they begin by the letter T.]

It is important to note the following colloquy of the argument before the District Court on October 28, 1968, involved in the petitioner's request to withdraw his pending action, its sequence being:

A. The trial Judge stated:

> "I received, I believe a letter from your, or signed with your name, that the case was withdrawn" (T-2a).

Petitioner did respond by stating:

"Yes Sir" (T-2a).

B. The court asked of counsel:

> "Is there any opposition to the dismissal of this action" (T-2a).

Counsels response were:

"*No objection*" (T-2a).

C. Prior to any further discussion or any decision of the Court, an inquiry was made into the relationship between the petitioner and his attorney, when the Court did ask:

> "Have you asked him for a release of his claim for a fee for the representation of you which he has already accorded" (T-4a).

The petitioner informed the Court:

> "Yes, sir, I did, and he would send it to me" (T-4a).

Upon this the Court did release the petitioners' attorney in accordance with United States District Court for the District of New Jersey Local Rule 18, when it stated:

> *"I will give you a release so you are in the clear with Mr. Holley"* (T-4a).

D. The crucial point of the Court proceedings developed when respondent's counsel did request cost, and then the Court asked of them:

> "Has either counsels for the opponents to the motion argued the question of the right of the litigant under these circumstances to dismiss his own case" (T-5a)?

Counsels responded by stating:

> *"No, your Honor, we have not"* (T-5a).

Then the Court informed all present:

> "All right, I'll mark the case ready, Mr. Gambocz, and when it is reached, we will discuss the new aspect, namely, the insistence that cost be allowed you; and also, I understand you are insistent that motion for summary judgment be adjudicated even though the plaintiff . . ." (T-5a).

Counsel for respondents interrupted the trial Judge, and immediately, by their own volition elected to withdraw their request of cost, and adjudication of summary judgment, thereupon the Court made the following pronouncement:

> *"Case will be dismissed"* (T-5a).

On May 11, 1970, the day of the argument, before the Court in which the petitioner set forth his motion to vacate and set aside the order of November 8, 1968, it was abundantly clear that counsels chose to ignore the ruling of the Court of October 28, 1968, and decided to deliver an *ex parte* order, because, respondents' did state in respect to the dismissal the following:

> "Your Honor, then said, 'Why do you gentlemen want costs.' I think Mrs. Kellers' attorney said, 'Because I think I am entitled to it. We have been through this barn too many times now.' Your Honor said, 'I'll hold it for argument later in the morning', *whereupon I submit that in an effort to save time, and not have to wait until the case was then reached for argument on the merits,* the attorney for Mrs. Keller said, 'Well, we will forego our application for costs', *Your Honor, then said case dismissed*" (T-16a).

Further, if any doubt exists as to the nature of the dismissal, respondents' counsel confirmed it quite readily when it stated:

> *"Now, it is a fact that your Honor did not say on that day with or without prejudice"* (T-15a).

The candor of respondents' counsel was quite a revelation as to its bases for rendering an *ex parte* decision when he stated:

> "Everybody assumed, I believe that it was with prejudice" (T-16a).

Even though the Court held in *Ziegler v. Railroad Co.*, 59 Ala. 599:

> *"If any question of fact or liability be conclusively presumed against him, this is not due process of of law."*

Aside from the fact that respondents' counsels did render *an ex parte order, which has never been denied,* the Third Circuit failed to comment upon the following additional 2 points asserted by the petitioner, which to this date stand uncontradicted or denied:

1. That counsels *never did submit to the petitioner a consent as to form* for his signature, contrary to New Jersey Court *Rule* 4:42-1, which states:

> "no order shall be signed by the Court unless, the form thereof has been settled on motion or notice to all parties affected thereby", or unless the written approval of such attorney for the parties to the form thereof is endorsed thereon."

2. Counsels *never did send notice of the order* as prepared by them to the petitioner prior to entry of judgment as required by F.R.C.P., *Rule* 77(d).

Mr. Justice Black and Mr. Justice Douglas in a separate opinion in the case of *Klapprott v. United States of America,* 335 U.S. 601, 69 S. Ct. 384, 93 L. Ed. 266, did concur and state with respect to review of an appeal where allegations are undenied, the following:

> "In considering whether a petition to set aside a default judgment was improperly dismissed, *undenied allegations must be accepted as true.*"

REASONS FOR GRANTING THE WRIT

It is axiomatic that the granting of a petition for a writ of certiorari lies entirely within the discretion of the Court. *Denver v. New York Trust Co.*, 229 U.S., 123 (1913). However it is submitted that this discretion should be exercised in the within matter for three reasons.

First, the Supreme Court of the United States has spoken on the subject of whether the Fourteenth Amendments' protection applies to the Seventh Amendment right to trial by jury, when the Court did set forth a clear and decisive opinion in respect to *Rule* 60(b), which to this date has been meticiously adhered to by the Courts as the applicable and landmark decision in respect to the federal question of *Rule* 60(b), the Court did state in *Bridoux v. Eastern Air Lines*, 214 F.2d 210:

> "But the Rule does bring to bear a more liberal attitude then pertained before its adoption. *Klapprott v. United States*, 335 U.S. 601, 69 S. Ct. 384-93 L. Ed. 266. (opinion of Mr. Justice Black in which Mr. Justice Douglas joins) It is there said, 335 U.S. at pages 614-615, 69 S. Ct. at pages 390, that "Other reason" clause of *Rule* 60(b) to which we have referred. N. 3, *supra*, enables a court to vacate a judgment whenever such action *"is appropriate to accomplish justice."* The discretion which undoubtedly resides with the trial judge must be considered with this in mind as well as the principle,
>
> "• • • Since courts universally favor trial on the merits, *slight abuse* of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order."
>
> *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. 2d 1038, 1040."

In light of the foregoing landmark precedence, it is abundantly clear that the Third Circuit totally ignored the principles heretofore expoused by the Supreme Court of the United States. Therefore, underlying the petitioners' request for review by the Court of this writ of certiorari is *Rule* 19(b), at page 3501, line 6, *Moore's Fed. Rules Practices*, as amended 1968, has decided a federal question in a way in conflict with applicable decisions of this Court.

Secondly, the Third Circuit in rendering its opinion departed far afield from the accepted and usual course of judical proceedings as stated by precedents, statutes, and the rules, for the opinion of the Third Circuit did patently err for a number of reasons. Certiorari must be granted to reverse these otherwise irrevocable errors, as the petitioner has no other recourse. The Blatant errors include:

(1) the Third Circuit failed to recognize the fact that by virtue of the entry of the *ex parte* order, an order contrary to the Courts' ruling, a fraud thereby had been perpetrated upon the Court.

(2) the Court failed to take into account the fact that the petitioner was never served wih a consent to form for his signature as required by *New Jersey Court Rule* 4:42-1,

(3) and finally, that the Court did not take judicial note that the petitioner was never served with notice of the order prior to entry of judgment as required under F.R.C.P., *Rule* 77(d).

As apparent ("apparent", because the aforesaid 3 issues which were alleged by the petitioner remain undenied, and must be accepted as true) as the facts are, the opinion of the United States Court of Appeals for the Third Circuit in the present matter did rest upon *Karl Boehm, et al. v. Office of Alien Property*, 344 F.2d 194;

and *Ackerman v. United States,* 340 U.S. 193, 202. However, these are not even close to being in point. On the contrary, *Ackerman v. United States, supra,* 95 L.Ed. at 209 supports the petitioners position, when the Supreme Court of the United States did state in reference to *Rule* 60(b):

> "This rule does not limit the power of a Court to entertain an independent action to relieve a party from judgment, order or proceeding, *or to grant relief to a defendant not actually personally notified as provided in Sec. 57 of the Judicial Code, USC, Title 28, Sec. 118, or to set aside a judgment for fraud upon the Court.*"

Thirdly, when the United States Court of Appeals for the Third Circuit did render its opinion, it flatly stated: "The simple answer to the appellants' situation here is that he is barred by the one-year limitation under *Rule* 60(b) . . .", and in so doing *rendered a decision in direct conflict* with the United States Court of Appeals for the Eighth Circuit, when that Court did render its opinion in the case of *Conerly v. Flower,* 410 F.2d 943, on May 14, 1969. The Eighth Circuit did state on page 943:

> "We think defendants argument misconstrues the respective procedure involved. *Rule* 59(e) provides that judgment can be amended or altered only within 10 days of its entry in order to provide finality for purposes of appeal. In this sense it is similar to a motion for new trial under *Rule* 50(b): the time for appeal is tolled by the filing of a motion within the requisite time. *Under Rule 60(b) on the other hand, the problem of finality is not involved; a motion under Rule 60 (b) does not affect the time for appeal nor the finality of judgment itself.*"

Further, the Eighth Circuit did state on page 942:

> "In granting affirmative relief under this rule providing for vacation of Judgment in event of fraud, trial Court is given broad discretion as to type of relief it might grant and is given express authority to impose just terms, but this does not mean that court may circumvent due process or U.S.C.A. Const. Amend. 7 and award damages or make finding without an evidentiary trial on the merits."

Amended *Rule* 60(b) provides:

> "On motion and upon such terms as just, the court may relieve a party or his legal representative from a final judgment, order, or proceding for the following reasons: (1) . . . . ; (2) . . . .; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other conduct of an adverse party, ... ; or (6) any other reason justifying relief from the operation of the Judgment; . . . . *A motion under this subdivision (b) does not affect the finality of a Judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a Judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, USC, Title 28, Sec. 118 or to set aside a judgment for fraud upon the court.*" . . . ."
>
> *Klapprott v. United States of America*, 335 U.S. 601-631; 93 L. Ed. 266 at 274.

If the judgment of the Third Circuit is permitted to stand, justice will have been denied to this petitioner, and all prospective petitioners before the Bar will no longer be guided by what was heretofore a clear and directing beacon in the cause of justice. Instead the precedents

established by the *Rule* 60(b), and the landmark decisions which followed will be rendered impotent, repugnant, and void. The petitioner respectfully petitions this Court to grant a review of this writ in the interest of justice and fair play.

CONCLUSION

For the above reasons it is respectfully submitted the within petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit be granted.

Respectfully submitted,

/s/ Bill J. Gambocz
BILL J. GAMBOCZ
Pro Se.

Dated: April 30, 1971

APPENDIX

Opinion of the Court
(Filed March 5, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 19,047

BILL J. GAMBOCZ,

Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

(D. C. Civil Action No. 8-68)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued January 8, 1971

Before GANEY and ADAMS, *Circuit Judges*, and WEIS, *District Judge*

GANEY, *Circuit Judge.*

In order to understand fully the position of the appellant here, it is necessary to put the matter in its proper perspective.

On March 4, 1966, the appellant filed a complaint against Lillian Apel, Louis La Plaga, John W. Ellmyer, Jr., George Miller, Richard McGinnis, Theodore C. Woerner and the Township of Edison, a municipal corporation, in the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-19136-65, the first count alleging, inter alia, that he had given a check to one Marie Keller in the sum of $55 in May of 1964, and that upon her return from Europe, the check having been returned unpaid, all of the named defendants agreed and conspired to utilize the criminal processes of the courts of New Jersey, for the purpose of embarrassing appellant in his standing in the community; injuring his good name and credit, inasmuch as he was then a candidate for Mayor of Edison, on the Republican ticket; that John W. Ellmyer, Jr., one of the defendants, who was the Police Chief of Edison, maliciously and in order to pervert the criminal processes of the State of New Jersey, advised Marie Keller that the only way she could collect the money owed her was to place criminal charges against appellant and in order to do so, he arranged with her to go to the office of defendant Louis La Plaga, a policeman in Edison, and they transported her to the office of an attorney in the State of New Jersey, who was the campaign manager for appellant's opponent, who was running for Mayor, and caused her to fill out a complaint before the defendant, Lillian Apel, charging appellant with a criminal offense. Defendants, John W. Ellmyer, Jr., Richard McGinnis and Theodore C. Woerner, then went to the home of appellant's elderly mother and father and maliciously advised them that they were searching for their son, causing them great suffering and shock, although they knew the plaintiff resided and maintained a business at 1028 Amboy Avenue, in Edison. The Edison newspapers carried the news of the criminal charges against

plaintiff, embarrassing him and interfering with "his advantageous economic relation," causing him much mental anguish and forcing him to spend large legal fees and expenses.

The second count of the complaint stated an incorporation of the facts alleged in the first count of the complaint; that defendants conspired against plaintiff maliciously for the purpose of harming his standing in the community while all of the defendants were employed and acting within the scope of their employment by the said defendant, the Township of Edison.

The New Jersey Superior Court rendered an adverse decision on the merits of the case following the trial, and the plaintiff appealed it to the Appellate Division of New Jersey Superior Court, where that court unanimously affirmed the judgment of the court below, and he then filed a petition for certification to the New Jersey Supreme Court, which was denied. Plaintiff then proceeded in the United States District Court for the District of New Jersey, in the instant action, alleging the same operative facts in his complaint as he did in the complaint filed in the Superior Court of New Jersey, and which was finally denied by the Supreme Court of New Jersey, and on November 8, 1968, he asked the court to withdraw the suit which the court did and at the hearing, the court announced that it was dismissing the same. A few days later, in a regular order filed by him, the suit was dismissed with prejudice.

Plaintiff then brought the matter to the attention of the Joint Subcommittee on Claims in the New Jersey State Legislature and after hearing the matter, the Subcommittee rejected the claim. Subsequently, plaintiff filed an action

in the United States District Court against the Joint Subcommittee, which the court dismissed, and on appeal to this Court, the dismissal was affirmed in a per curiam opinion. Nineteen months after the entry of the order dismissing the cause of action with prejudice in the District Court of New Jersey, appellant filed a motion on May 11, 1970, to re-open the judgment, wherein he alleged that the order of November 8, 1968, entered with prejudice, was never brought to his attention, that while the order may have been sent to his counsel, his counsel never notified him of the said order and left sometime later for California, and that he never would have consented to the dismissal with prejudice had he known such an order would be entered. However, the court denied the motion. It is to be noted that at the time the order was sent by the Clerk of the Court to his counsel, he was then attorney of record.

The appellant must rely on Rule 60(b)[1] for his motion to vacate the judgment of the district court. It is apparent from reading the Rule that there is really no exception

---

[1] Rule 60(b) provides, in pertinent part, as follows:

"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment. *The motion shall be made within a reasonable time, and for reasons* (1), (2), *and* (3) *not more than one year after the judgment, order, or proceeding was entered or taken. . . .*" (Emphasis ours.)

under which he can come, in order to get around the fact that more than one year had passed during which he would have had to file the motion. The simple answer to the appellant's situation here is that he is barred by the one-year limitation under Rule 60(b), and there is nothing this Court can do by way of extending it since he cannot come in under sections (1), (2) or (3)—section (6) may not be used as a catchall to avoid the one-year limitation. *Karl Boehm, et al. v. Office of Alien Property,* 344 F.2d 194; *Ackerman v. United States,* 340 U.S. 193.202.

Additionally, an examination of the complaint which he filed in Middlesex County, New Jersey, and which action went all the way to the Supreme Court of New Jersey, when scrutinized with the complaint which he filed in the District Court in this action, is merely a re-alleging of the operative facts in the New Jersey case. However, in view of the decision we reach here that he is barred by Rule 60(b), we need not proceed to any other ground such as estoppel by judgment.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment of the United States Court of Appeals
(Filed March 5, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 19,047

BILL J. GAMBOCZ,

Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

(D. C. Civil Action No. 8-68)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE ..... DISTRICT OF NEW JERSEY

Present:

GANEY and ADAMS, *Circuit Judges*
and WEIS, *District Judge*

This cause came on to be heard on the record from the United States District Court for the ..... District of New Jersey and was argued by counsel for appellee, and appellant, pro se.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed May 13, 1970, be, and the same is hereby affirmed, with costs taxed against appellant.

ATTEST:

/s/ Thomas F. Quinn
THOMAS F. QUINN

March 5, 1971

Appellant's Notice of Motion for Rehearing En Banc
(Filed March 13, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

DOCKET NO. 19,047

BILL J. GAMBOCZ,

Plaintiff-Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

Defendants-Appellees.

Notice is hereby given that the Appellant, Bill J. Gambocz, will petition the United States Court of Appeals for the Third Circuit for a Rehearing In Banc, on the Opinion of the United States Court of Appeals for the Third Circuit entered in favor of the Appellees in this action on March 5, 1971.

/s/ Bill J. Gambocz
BILL J. GAMBOCZ
Pro Se

Sworn to and subscribed before
me this 11th day of March 1971

/s/ Nicholas J. Genito
Notary Public of New Jersey
My Commission Expires December 28, 1972

Order Denying Appellant's Petition For Rehearing En Banc
(Filed April 6, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 19,047

BILL J. GAMBOCZ,

Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

Present:

HASTIE, *Chief Judge*, GANEY, SEITZ, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, *Circuit Judges*, and WEISS, *District Judge*.

The petition for rehearing filed by BILL J. GAMBOCZ, the appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority

of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ William H. Hastie
WILLIAM H. HASTIE
Chief Judge

Dated: April 6, 1971

Motion by Appellant for Stay of Mandate
(Filed April 13, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

DOCKET NO. 19,047

BILL J. GAMBOCZ,

Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

Appellees.

Please take notice that the undersigned makes application to the United States Court of Appeals, for the Third Circuit, sitting at 2046 United States Court House, 9th & Chestnut Street, Philadelphia, Pa., 19107, for a Stay of Mandate to the above referred to Civil Action, pending application to the United States Supreme Court for a Writ of Certiorari for a period of thirty (30) days.

BILL J. GAMBOCZ
/s/ Bill J. Gambocz
Pro Se

Sworn to and subscribed before
me this 12th day of April 1971.

Notary Public of New Jersey
My Commission Expires November 7, 1971

Order Staying the Issuance of the Certified Judgment In Lieu of Formal Mandate
(Filed April 21, 1971)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 19,047

BILL J. GAMBOCZ,

Appellant,

vs.

JOHN W. ELLMYER, JR., LILLIAN APEL, LOUIS LA PLAGA and MARIE KELLER

(D. C. Civil Action No. 8-68)

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is ORDERED that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until May 13, 1971.

/s/ J. Cullen Ganey
J. CULLEN GANEY
Senior Circuit Judge

Dated: April 21, 1971

Docket Entries

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

CASE NO. 19,047

DATE	FILINGS—PROCEEDINGS
6-29-1970	Certified copy of Notice of Appeal rec'd May 26, 1970, filed. Record rec'd June 24, 1970, filed.
7- 1-1970	Certificate that Appellant raises question of Constitutionality, where U. S. is not a party, specifically to due process of law, etc. to Attorney General.
7- 9-1970	Appearance of Peter N. Perretti, Jr., Riker, Danzig, Scherer & Brown, for appellees, filed.
7-20-1970	Brief for appellant, filed.
7-20-1970	Appendix, filed.
7-24-1970	Appearance of John K. Cooper; Meth & Wood, for appellee, Marie Keller, filed.
8-17-1970	Affidavit of service of appellant's brief and appendix by hand on July 17, 1970, filed.
8-19-1970	Brief for appellees, Ellmeyer, Apel and La Plaga, filed. Affidavit of mailing on August 17, 1970 attached.
8-21-1970	Stipulation of counsel for appellees that all appellees shall rely upon the brief submitted

	by the firm of Riker, Danzig, Scherer and Brown, Esquires, filed. (Proof of service of above stipulation on appellant in letter dated August 24, 1970 by John K. Cooper)
9- 1-1970	Reply brief, filed. (25 copies)
9- 8-1970	Affidavit of Service, filed.
9- 8-1970	Submitted on above stipulation (Hastie, Chief Judge)
9-14-1970	Order (Hastie, Chief Judge) granting stipulation by Meth & Wood, Esqs., and Riker, Danzig, Scherer & Brown, Esqs., that all co-defendants shall rely upon the brief submitted by the firm of Riker, Danzig, Scherer and Brown, Esquires, filed.
1- 8-1971	Argued. Coram: Ganey and Adams, Circuit Judges and Weis, District Judge.
3- 5-1971	Opinion of the Court (Ganey and Adams, Circuit Judges and Weis, District Judge), filed.
3- 5-1971	Judgment affirming the judgment of the District Court, filed May 13, 1970, with costs taxed against appellant, filed.
3-10-1971	Bill of costs for appellee, filed. (3 copies) Proof of service attached.
3-13-1971	Petition for Rehearing En Banc and Opinion of the Court, filed. (25 copies) (for appellant)
3-23-1971	Certificate of service of above, filed.
4- 6-1971	Order (Hastie, Chief Judge, Ganey, Seitz, Van Dusen, Aldisert, Adams, Gibbons, Rosenn, Circuit Judges and Weis, District Judge) denying petition for rehearing, filed.

4-13-1971 Motion by appellant for Stay of Mandate, filed. (4 copies) Certificate of service attached.

4-21-1971 Order (Ganey, Circuit Judge) staying the issuance of the certified judgment in lieu of formal mandate until May 13, 1971, filed.

Certification

I, THOMAS F. QUINN, Clerk of the United States Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original appendix and proceedings in this Court in the case of Bill J. Gambocz, Appellant vs. John W. Ellmyer, Jr., et al. No. 19,047 on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 27th day of April, 1971.

/s/ Thomas F. Quinn
Clerk of the U.S. Court of Appeals,
Third Circuit